

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JERRY UVARIUS TOWNSEL,

Plaintiff,

v.

TOMAS GAHAN, *et al.*,

Defendants.

Case No. C12-1165-RAJ-BAT

**REPORT AND
RECOMMENDATION RE:
VOLUNTARY DISMISSAL**

Pro se plaintiff Jerry Uvarius Townsel, an indigent prisoner proceeding *in forma pauperis*, moves to voluntarily dismiss this case without prejudice. (Dkt. 36); *see* Fed. R. Civ. P. 41(a)(2). Defendants, who filed an Answer and a motion for summary judgment, do not oppose Mr. Townsel's motion to voluntarily dismiss but ask that the Court, in its discretion, to condition the dismissal without prejudice on plaintiff's payment of \$2,133.40 in costs. (Dkts. 37, 38.) Should Mr. Townsel fail to pay those costs, defendants ask that the dismissal be *with* prejudice. (Dkt. 37, at 2.)

The Court recommends **GRANTING** plaintiff's motion to voluntarily dismiss this action without prejudice and without costs (Dkt. 36), and **STRIKING** all other pending motions as moot. The Court finds that justice is not served by demanding that an indigent prisoner pay \$2,133.40 or face a voluntary dismissal with prejudice. The Federal Rules of Civil Procedure

1 provide defendants with an adequate remedy should Mr. Townsel choose to relitigate any of his
2 present claims. If Mr. Townsel brings a new case based on or including the dismissed claims,
3 the Court may order him to pay all or part of the costs of the previous action. Fed. R. Civ. P.
4 41(d).

5 Any objections to this Recommendation must be filed and served upon all parties no later
6 than **January 2, 2013**. The Clerk should note the matter for **January 4, 2013**, as ready for the
7 District Judge's consideration if no objection is filed. If objections are filed, any response is due
8 within 14 days after being served with the objections. A party filing an objection must note the
9 matter for the Court's consideration 14 days from the date the objection is filed and served. The
10 matter will then be ready for the Court's consideration on the date the response is due.
11 Objections and responses shall not exceed **3 pages**. The failure to timely object may affect the
12 right to appeal.

13 DATED this 11th day of December, 2012.

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16 BRIAN A. TSUCHIDA
17 United States Magistrate Judge
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